

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
8

9 MAJIED S. ALFORD,

10 *Petitioner,*

11 vs.

12 SHERYL FOSTER, *et al.*,

13 *Respondents.*  
14  
15

2:05-cv-00872-KJD-GWF

ORDER

16 This habeas action under 28 U.S.C. § 2254 comes before the Court on petitioner's  
17 motion (#24) for partial dismissal and stay of proceedings. Petitioner requests that the Court  
18 dismiss all of his unexhausted claims and stay this action while he returns to state court to  
19 exhaust Ground 6. No opposition to the motion has been filed.

20 Pursuant to *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005),  
21 the Court finds that petitioner has demonstrated good cause, that Ground 6 is not plainly  
22 meritless, and that petitioner has not engaged in intentionally dilatory litigation tactics. The  
23 Court notes further that, subsequent to *Rhines*, the Ninth Circuit has reiterated its “‘strong  
24 preference’ in favor of granting the *Kelly* [stay] procedure, if requested by the petitioner, ‘when  
25 an outright dismissal will render it unlikely or impossible for the petitioner to return to federal  
26 court within the one-year limitation period.’” *Robbins v. Carey*, 481 F.3d 1143, at n.4 (9<sup>th</sup> Cir.,  
27 Mar. 12, 2007), *quoting Kelly v. Small*, 315 F.3d 1063, 1070 (9th Cir.2003). Accordingly, a  
28 stay will be granted.

1 The Court expresses no opinion as to whether the circumstances presented satisfy the  
2 cause and prejudice standard with respect to any claim of procedural default. The Court  
3 further does not tacitly or impliedly accept all arguments made by petitioner in the motion,  
4 including, but not limited to, petitioner's argument that the instructions on the state petition  
5 form were misleading or were in conflict with an order of this Court. The Court's holding  
6 herein should not be read as an express or implied holding on these issues or any other  
7 issue. The Court holds only that the criteria for a stay under *Rhines* have been satisfied, and  
8 its findings and holding are expressly limited to that specific context. The Court further  
9 adheres to its earlier conclusion that the federal claims in Ground 6 were not exhausted and  
10 to all reasons assigned in that regard.

11 IT THEREFORE IS ORDERED that petitioner's motion (#24) for partial dismissal and  
12 stay of proceedings is GRANTED, subject to the remaining provisions of this order and further  
13 pursuant to Local Rule LR 7-2(d).

14 IT FURTHER IS ORDERED that Ground 1(b), to the extent that petitioner claims  
15 ineffective assistance because counsel allegedly failed to object to the violation of his right  
16 to be notified of the correct date of his revocation hearing, and Grounds 1(c), 1(f), 2(b), 3, 4,  
17 6, and 8 hereby are DISMISSED without prejudice. This dismissal with respect to the part of  
18 Ground 1(b) identified in the preceding sentence shall not extend to the remaining allegations  
19 in Ground 1(b).

20 IT FURTHER IS ORDERED that this action is STAYED pending exhaustion of the  
21 unexhausted claims. Petitioner may move to reopen the matter following exhaustion of the  
22 claims and any party otherwise may move to reopen the matter and seek any relief  
23 appropriate under the circumstances.

24 IT FURTHER IS ORDERED that grant of a stay is conditioned upon petitioner filing a  
25 state post-conviction petition or other appropriate proceeding in state district court within sixty  
26 (60) days of entry of this order and returning to federal court with a motion to reopen within  
27 sixty (60) days of issuance of the remittitur by the Supreme Court of Nevada at the conclusion  
28 of the state court proceedings.

1 IT FURTHER IS ORDERED that the Clerk of Court shall ADMINISTRATIVELY CLOSE  
2 this action until such time as the Court grants a motion to reopen the matter.

3 DATED: May 14, 2007.

4  
5 

6  
7 

---

KENT J. DAWSON  
United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28